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## NUCLEAR REGULATORY COMMISSION

[NRC-2012-0235]

### Tribal Policy Statement

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed policy statement; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is making available for public comment the proposed Policy Statement, "NRC Tribal Policy Statement." The proposed policy statement establishes principles to be followed by the NRC to ensure effective government-to-government interactions with American Indian and Alaska Native Tribes, and to encourage and facilitate Tribal involvement in the areas over which the Commission has jurisdiction. The NRC is committed to an open and collaborative regulatory environment in the development and implementation of activities that have Tribal implications and welcomes comments as a means of fostering meaningful consultation and coordination with Indian Tribes.

**DATES:** Submit comments on the proposed Tribal Policy Statement by **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** You may access information and submit comments related to this document by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID: **NRC-2012-0235**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3442; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Mail Stop: 3WFN-06-44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Michelle Ryan, telephone: 630-829-9724, e-mail: [Michelle.Ryan@nrc.gov](mailto:Michelle.Ryan@nrc.gov); or Haimanot Yilma, telephone: 301-415-8029, e-mail: [Haimanot.Yilma@nrc.gov](mailto:Haimanot.Yilma@nrc.gov); both of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

## **SUPPLEMENTARY INFORMATION:**

- I. Accessing Information and Submitting Comments.
- II. Background.

III. Discussion.

IV. Summary of Public Comments on the Proposed Policy Statement and NRC Staff Responses to the Comments.

V. Proposed Tribal Policy Statement.

## **I. Accessing Information and Submitting Comments**

### **A. Accessing Information**

Please refer to Docket ID: **NRC–2012–0235** when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document by any of the following methods:

- Federal Rulemaking Web site: Go to <http://www.regulations.gov> and search for

Docket ID: **NRC–2012–0235**.

- NRC’s Agencywide Documents Access and Management System (ADAMS):

You may access publicly available documents online in the NRC Library at:

<http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[ADAMS Public Documents](#)” and then select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. **NRC’s PDR:** You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852.

## B. Submitting Comments

Please include Docket ID: **NRC–2012–0235** in the subject line of your comment submission in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

## II. Background

The purpose of this proposed Tribal Policy Statement is to establish principles to be followed by the NRC to ensure effective government-to-government interactions with Indian Tribes and to encourage and facilitate Tribal involvement in the areas over which the Commission has jurisdiction. The NRC licenses and regulates the Nation's civilian use of radioactive materials to protect public health and safety, common defense and security, and the environment under the Atomic Energy Act of 1954, as amended (AEA) (42 U.S.C. 2011). Other statutory provisions, such as the National Historic Preservation Act (NHPA) (16 U.S.C. 470) and

National Environmental Policy Act (NEPA) (42 U.S.C. 4321), require Tribal consultation as part of the NRC's evaluation of agency activities during licensing actions, rulemaking, or policy development. The NRC complies with statutory provisions that require Tribal consultation, and interacts with Tribal governments on a case-by-case basis.

- In November of 2000, President Clinton issued Executive Order (EO) 13175, "Consultation and Coordination with Indian Tribal Governments," (65 FR 67249). The Order established the legal principles below to guide agencies when forming and implementing policies with potential Tribal implications.

- The United States has a unique legal relationship with Indian Tribal governments as set forth in the Constitution of the United States, treaties, statutes, EOs, and court decisions. The Federal Government recognizes Indian Tribes as domestic dependent nations under its protection and has enacted statutes and promulgated regulations that establish and define a trust relationship with Indian Tribes.

- The Federal Government has recognized the right of Indian Tribes to self-government with inherent sovereign powers over their members and territory and supports Tribal sovereignty and self-determination. The United States continues to work with Indian Tribes on a government-to-government basis to address issues concerning Tribal self-government, Tribal trust resources, and Indian Tribal treaty and other rights.

EO 13175 states that "Policies that have tribal implications' refers to regulations, legislative comments, or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes."

As an independent regulatory agency, the NRC is exempt from the requirements of EO 13175. However, in January 2001, the Commission sent correspondence to the Office of Management and Budget stating that “in exercising its regulatory authority, this agency acts in a manner consistent with the fundamental precepts expressed in the Order [(EO 13175)].” To that end, the Commission has adopted agency practices that ensure consultation and cooperation with Indian Tribal governments fully consistent with both President Clinton’s 1994 guidance and with EO 13175” (ADAMS Accession No. ML010260297).

In January of 2009, the Commission directed the staff to develop and implement an internal protocol for interaction with Native American Tribal Governments that would allow for custom tailored approaches to address both the NRC and Tribal interests on a case-by-case basis in a Staff Requirements Memorandum (SRM) for the December 2008 “Briefing on Uranium Recovery,” SRM-M081211 (ADAMS Accession No. ML090080206). The Commission also tasked the staff with preparing an assessment of the policies that other Federal agencies have developed for interactions with Tribal governments. The staff responded to this Commission direction in SECY-09-0180, “U.S. Nuclear Regulatory Commission Interaction with Native American Tribes” (ADAMS Accession No. ML092920384). In this document, the staff provided a protocol for NRC Tribal interaction, assessed other Federal agency Tribal policies, and examined the effectiveness of the NRC’s case-by-case approach to Tribal interaction. The staff also developed the NRC Tribal Protocol Manual as an internal protocol for interacting with Tribal governments (ADAMS Accession No. ML092990559). At that time, the staff concluded that formalizing the NRC’s practices would not enhance its interactions with Tribal governments.

### Current NRC Practices for Interactions with Tribes

Numerous Federally recognized Tribes have an interest in public health and safety and environmental protection associated with NRC regulatory activities that include uranium

recovery and nuclear power plant licensing, and radioactive material transportation and disposal, and spent fuel storage. The NRC exercises its trust relationship or fiduciary duty in the context of its authorizing statutes, including the AEA, and implements its responsibilities through assuring that Tribal members receive the same protections under regulations that are available to other persons. Under the NRC's case-by-case approach to Tribal interaction, the NRC or Tribal governments can request consultation on regulatory activities that have substantial direct Tribal implications. The NRC's policy is to consult on a government-to-government basis with Tribal governments consistent with its obligations under law and regulation<sup>1</sup> at the earliest stage possible in NRC regulatory actions with Tribal implications.

### **III. Discussion**

Within the context of this discussion, the following definitions will apply unless otherwise indicated:

Consultation refers to meaningful and timely discussion with Tribal governments on NRC regulatory actions that have substantial direct effects on one or more Indian Tribes. The Consultation process may include, but is not limited to, providing for mutually agreed protocols, timely communication, coordination, cooperation, and collaboration to provide opportunities for appropriate Tribal officials or representatives to meet with NRC management or staff.

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<sup>1</sup> The NRC's proposed policy statement is intended only to improve the internal management of the Commission, and is not intended to, and does not, grant, expand, create, or diminish any rights, benefits, or trust responsibilities, substantive or procedural, enforceable at law or in equity in any cause of action by any party against the United States, the Commission, or any person. This Tribal Policy Statement does not alter, amend, repeal, interpret, or modify Tribal sovereignty, any treaty rights of any Indian Tribes, or preempt, modify, or limit the exercise of such rights. Nothing herein shall be interpreted as amending or changing the Commission's regulations.

Indian Tribe means any American Indian or Alaska Native Tribe, Band, Nation, Pueblo or other organized group or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

Regulatory Actions with Tribal Implications refers to regulations, legislative comments or proposed legislation, and other policy statements or actions including licensing and permitting that have substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Tribal Official means an elected, appointed, or designated official or employee of an Indian Tribe or authorized intertribal organization.

Trust Responsibility refers to a fiduciary obligation on the part of the United States to protect Tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of Federal law with respect to Indian Tribes. In several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and the Federally recognized Tribes. The NRC exercises its fiduciary duty in the context of its authorizing statutes including AEA, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, as amended, the Low-Level Radioactive Waste Policy Act of 1985, the Uranium Mill Tailings Radiation Control Act of 1978, as amended, and the Energy Policy Act of 2005, as amended, and implements its responsibility by assuring that Tribal members receive the same protections under its implementing regulations that are available to other persons.

In May 2012, the Commission issued SRM-COMWDM-12-0001, "Tribal Consultation Policy Statement and Protocol" (ADAMS Accession No. ML121430233), directing the NRC staff to provide a proposed Policy Statement and protocol on consultation with Tribal governments.



The Commission also directed staff to do the following: (1) use the existing, "Tribal Protocol Manual: Guidance for NRC Employees," and the staff's ongoing efforts outlined in SECY-09-0180 as a starting point; (2) seek input on how to improve the existing manual from the Tribes and the public; (3) ensure that the policy statement clearly articulates that the NRC's actions must be in accordance with its governing statutes and regulations; (4) ensure that the policy statement and protocol respect and reflect sensitivity between Indian Tribes who are Federally recognized and those who are not; (5) ensure that the policy statement and protocol indicate that the NRC will outreach to State-recognized Tribes on a case-by-case basis; (6) explore additional opportunities for State-recognized Tribes to participate in the NRC regulatory process; and (7) make the protocol prominently available on the NRC's public Web site. The Commission also specified that the proposed policy statement should serve as a high-level foundation for the protocol and should echo the language and spirit of the relevant Presidential Memoranda and EOs.

On October 12, 2012 (77 FR 62269), the NRC solicited public comment on its existing revised Tribal Protocol Manual and requested suggestions for the development of a proposed Policy Statement that will establish principles to be followed by the NRC to ensure effective government-to-government interactions with Indian Tribes and to encourage and facilitate involvement by Indian Tribes in the areas over which the Commission has jurisdiction. The public comment period was open for 180 days; and the NRC received six comment letters from two Tribal governments, two mining associations, one inter-Tribal organization, and a Tribal college. The staff has developed a proposed Tribal Policy Statement and revised the NRC Tribal Protocol Manual considering those comments. The Commission is currently seeking public comments on the proposed Tribal Policy Statement. The NRC is also seeking public comment on the Tribal Protocol Manual in a separate notice published concurrently in this issue of the *Federal Register*.

In 2014, the NRC intends to publish the revised Tribal Protocol Manual along with the public comments received on the prior version of that document. Once the Commission approves the final Tribal Policy Statement, the NRC will make conforming changes to the Tribal Protocol Manual, as appropriate, and reissue the Manual concurrently with the final Policy Statement. The summary of public comments to the proposed Tribal Policy Statement and the NRC responses to those comments are provided below.

#### **IV. Summary of Public Comments and Responses to Comments**

The NRC solicited suggestions regarding the development of the proposed Tribal Policy Statement by posing the following questions: (1) How can the NRC strengthen government-to-government relationships with Native American Tribes? (2) What practices have the NRC or other Federal agencies employed that have been effective in identifying Tribal interests and resolving Tribal concerns about proposed agency actions? (3) Are there specific Tribal Policy Statements from other Federal agencies that could serve as a starting point for the NRC's efforts? (4) What unique Tribal issues should the NRC be aware of as a non-landholding, regulatory agency that issues licenses under the Atomic Energy Act? Comments and responses related to these questions are listed below. Comments submitted that related to the Tribal Protocol Manual, but were useful to the development of the proposed Tribal Policy Statement, were also considered.

1. How can NRC strengthen government-to-government relationships with Native American Tribes?

Comment 1.1. Commenters suggested that the NRC may improve its government-to-government relationship with Tribes by developing a Tribal policy statement and engaging in regular dialogue with Tribes.

Response 1.1. The NRC agrees with this comment. Current staff efforts have centered on revising the NRC's Tribal Protocol Manual and developing an agency-wide Tribal Policy Statement for Commission approval.

The proposed Tribal Policy Statement recognizes the need for the NRC to seek out opportunities to engage Tribal officials regarding specific regulatory actions. The Policy Statement also recognizes that general outreach may be accomplished through NRC participation in Tribal meetings that are held by the NRC's governmental partners and through other fora. The proposed Tribal Policy Statement also underscores the NRC's commitment to its government-to-government relationship with Indian Tribes and reinforces the commitment through outreach and consultation. The proposed Tribal Policy Statement further underscores the NRC's commitment to its relationship with Indian Tribes by identifying NRC management and staff members responsible for overseeing Tribal consultation efforts.

Comment 1.2. Multiple comments centered on the importance of recognizing Tribal sovereignty and the unique legal status of Tribes as well as the Federal Trust relationship during the NRC's interaction with Tribes. Commenters noted that Tribes retain inherent sovereignty and should be considered to be governmental partners rather than "stakeholders." Commenters suggested that the NRC should recognize that Tribal governments have primary authority and responsibility for the protection of the health, safety, and welfare of their citizens and should be part of the government-to-government consultation process with respect to agency actions that may impact the citizens or lands of Indian Tribes.

Response 1.2. The NRC agrees with this comment. The Commission recognizes Tribal sovereignty and demonstrates a commitment to government-to-government relations with

Federally recognized Tribes, upholding the spirit of EO 13175. Congress authorized the Federal government to regulate specified radioactive materials to protect public health and safety and common defense and security in the Atomic Energy Act of 1954. The NRC has regulatory authority over these radioactive materials in areas of exclusive Federal jurisdiction including Tribal reservations. However, the NRC exercises this regulatory authority in a manner consistent with the fundamental precepts expressed in EO 13175 and supports establishing regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have substantial direct effects on one or more Indian Tribes.

Comment 1.3. One comment suggested that the NRC should formally define the Federal Trust responsibility in detail.

Response 1.3. The NRC agrees with this comment with respect to defining the NRC's Federal Trust responsibility towards Indian Tribes. The proposed Tribal Policy Statement reflects the NRC's recognition of the Federal Trust relationship and the NRC's commitment to a government-to-government relationship with Federally recognized Tribes with respect to agency actions that have substantial direct effects on one or more Indian Tribes.

The NRC exercises its fiduciary duty in the context of its authorizing statutes, including the AEA, and implements any fiduciary responsibility by assuring that Tribal members receive the same protections under regulations implemented by the NRC that are available to other persons. The NRC will seek to consult with Indian Tribes on agency actions that have substantial direct effects on one or more Indian Tribes. Related staff guidance can be found in NRC Management Directive 5.1, "Intergovernmental Consultation," which ensures that major interagency agreements, major organizational changes, significant rules and regulations, statements of policy, guides and standards, and major studies developed by the NRC that significantly impact Indian Tribes are prepared with appropriate involvement and meaningful

consultation with Indian Tribes at the earliest possible stage (ADAMS Accession No. ML041770442).

Comment 1.4. One comment noted that the NRC should provide refreshments during meetings with Tribes.

Response 1.4. The NRC recognizes that providing refreshments during gatherings or meetings may be customary in some Native American cultures. Under Federal law, however, food and refreshments are generally considered to be personal expenses that cannot be purchased using Federal funds. The Commission must comply with Federal law pertaining to the provision of food or refreshments at meetings.

2. What practices have the NRC or other Federal agencies employed that have been effective in identifying Tribal interests and resolving Tribal concerns about proposed agency actions?

Comment 2.1. One commenter suggested that the NRC should utilize other Federal agencies in developing shared information tools to better communicate with Indian Tribes.

Response 2.1. The NRC agrees with this comment and works closely with other Federal agencies and interagency working groups on Tribal initiatives. The NRC routinely collaborates with other Federal agencies regarding Tribal consultations and has a related Memorandum of Understanding with the U.S. Bureau of Land Management. Additionally, NRC staff examined Tribal policies in place at other Federal agencies during the development of the proposed Tribal Policy Statement. The proposed Tribal Policy Statement recognizes the importance of coordinating our Tribal consultation efforts with other Federal partners.

3. Are there specific Tribal Policy Statements in other Federal agencies that could serve as a starting point for the NRC's efforts?

No commenters identified specific Federal agency policy statements that should serve as a starting point for the NRC Policy Statement. However, the NRC staff examined 15 other Federal agencies' Tribal policies and used them as a basis for developing the proposed NRC Tribal Policy Statement.

4. What unique Tribal issues should the NRC be aware of as a non-landholding, regulatory agency that issues licenses under the Atomic Energy Act?

Comment 4.1. Commenters submitted suggestions related to unique Tribal issues that the NRC should consider during the development of the proposed Tribal Policy Statement. Commenters indicated that the NRC should recognize the distinction between Federally recognized and non-Federally recognized State Tribes and noted that the NRC should consider State Tribes and other means for identifying Tribes that ratified treaties. Additionally, commenters noted that the NRC should consider the dynamics of the State and Tribal relationship, including the application of State regulations and policies to Tribal communities.

Response 4.1. The NRC agrees with this comment in part, acknowledges the unique relationship that exists between the Federal government and Federally recognized Tribes, and recognizes that this relationship is independent of any State recognition of Tribal sovereignty. The proposed Policy Statement identifies the distinction between Federal and State-recognized Tribes. This distinction is also reflected in the revised NRC Tribal Protocol Manual. However, the NRC cannot confer Federal recognition on non-Federally recognized State Tribes and defers to the Department of the Interior for such actions. With regard to State regulation and policies, typically land within the boundaries of Federally recognized Indian Tribe's Reservations is an area of exclusive Federal jurisdiction for NRC regulatory purposes.

Comment 4.2. Several comments stated the need for the NRC to understand the distinction between Tribal and Non-Tribal cultures, especially as they relate to energy development in Indian Country. Commenters suggested that the NRC should recognize that Tribal cultures vary from Tribe to Tribe and that some may place more emphasis than others on natural resources. Comments also suggested that the NRC should account for differences in culture related to the decision-making process on energy development issues, allowing for flexibility in scheduling and input from members of Indian Tribes. Commenters noted that the NRC should not only recognize Tribal laws and spiritual beliefs pertaining to the environment and natural resources but should also include discussions of risk assessment. Commenters suggested that the NRC should respect Tribal moratoriums and explicit concerns related to natural resource extraction on reservations or lands nearby. Commenters also suggested that the NRC should work with other local agencies and institutions to gain a better understanding of the complexities and uniqueness of each Indian Tribe.

Response 4.2. The NRC agrees with this comment and acknowledges that significant cultural differences may exist between Tribal and non-Tribal cultures and between the different Tribal cultures. This is reflected in staff guidance provided in the Tribal Protocol Manual, which identifies examples of cultural differences between Tribal and non-Tribal cultures and considerations for the NRC staff, including a recommendation to research Tribal history and current Tribal issues and concerns.

The NRC recognizes the importance that some Indian Tribes may place on natural resources. This is reinforced in the proposed Policy Statement, which notes that the NRC will engage in consultation with Indian Tribes on NRC regulatory actions that have substantial direct effects on one or more Indian Tribes.

The NRC recognizes that there may be differences in how the NRC staff and Tribes approach time and schedules during the decision-making process. The revised Tribal Protocol

Manual has been updated to better reflect potential cultural differences with respect to agenda planning and scheduling. The NRC recognizes that Tribal elders and others knowledgeable about religious and cultural traditions can play an important role in the Tribal community during the decision-making process related to energy development and other important decisions. Chapter 2 of the Tribal Protocol Manual recognizes, “Tribal sovereignty includes the Tribe’s right to reach decisions and conduct meetings however they wish,” and notes, “Elders are highly respected in Tribal communities, whether or not they hold an official position.” When the NRC engages in government-to-government consultations, it does so with designated representatives of the Tribal government, but the NRC’s regulatory process allows additional opportunities for members of the Tribal community at large, along with other members of the public, to contribute comments and attend meetings.

The NRC recognizes the Tribal views of natural resources and land impact decision-making related to energy development. Chapter 3 of the revised Tribal Protocol Manual notes that, “Some Native Americans believe that all living things are interconnected and that the spiritual and natural worlds are one. Because of this, perceived threats to their environment may be viewed as direct threats to their health, culture, and spiritual well-being.” The Manual encourages the NRC staff to practice open communications, adaptability, and open-mindedness during interactions with Tribal members, including during risk assessment activities. With regard to Tribal moratoriums or concerns related to natural resource extraction, the NRC respects Tribal sovereignty and the Tribe’s right to control the lands that are within their regulatory jurisdiction. The NRC licensees must obtain necessary permits or licenses from Federal, State, local or Tribal governments, as applicable, before operating under a NRC license. It is the NRC’s practice to work closely with the Tribes, other Federal agencies and interagency working groups on Tribal initiatives to gain knowledge of Tribal cultures, beliefs, and environmental concerns.



## **V. Proposed Tribal Policy Statement**

This section includes the proposed language in its entirety for the proposed Tribal Policy Statement, as follows.

The purpose of this proposed Tribal Policy Statement is to set forth principles to be followed by the U.S. Nuclear Regulatory Commission (NRC) to ensure effective government-to-government interactions with American Indian and Alaska Native Tribes and to encourage and facilitate Tribal involvement in the areas over which the NRC has jurisdiction. It seeks to provide agency-wide principles to achieve consistency but also encourage custom-tailored approaches to consultation and coordination that reflect the circumstances of each situation and the preference of each Tribal government. It is the NRC's expectation that all program and regional office consultation and coordination practices will be consistent and adhere to the Tribal Policy Statement. This Tribal Policy Statement is based on the United States Constitution, treaties, statutes, Executive Orders (EOs), judicial decisions, and the unique relationship between Indian Tribes and the Federal government.<sup>2</sup>

The following principles shall guide the NRC's interaction with Indian Tribes:

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<sup>2</sup> This Tribal Policy Statement is intended only to improve the internal management of the Commission, and is not intended to, and does not, grant, expand, create, or diminish any rights, benefits, or trust responsibilities, substantive or procedural, enforceable at law or in equity in any cause of action by any party against the United States, the Commission, or any person. This Tribal Policy Statement does not alter, amend, repeal, interpret, or modify Tribal sovereignty, any treaty rights of any Indian Tribes, or preempt, modify, or limit the exercise of such rights. Nothing herein shall be interpreted as amending or changing the Commission's regulations.

1. The NRC Recognizes the Federal Trust Relationship and Will Uphold its Trust Relationship with Indian Tribes.

As an independent agency of the Federal government, the NRC shares the unique trust relationship with, and responsibility to, Indian Tribes. At the same time, the NRC's actions must be in accordance with its authorizing statutes and regulations. The NRC shall respect Indian Tribal self-government and sovereignty, will honor Tribal rights, and meet responsibilities that arise from the unique relationship between the Federal government and Indian Tribal governments.

2. The NRC Recognizes and Is Committed to a Government-to-Government Relationship with Indian Tribes.

The NRC recognizes the right of each Indian Tribe to self-governance and supports Tribal sovereignty and self-determination. The NRC recognizes Tribal governments as dependent domestic sovereign nations, independent from State governments, with separate and distinct authorities.

3. The NRC Will Conduct Outreach to Indian Tribes.

The NRC will consult and coordinate with Indian Tribes, as appropriate, related to its regulatory actions with Tribal implications and will seek additional opportunities for general outreach. The NRC will participate in national and regional Tribal conferences and summits hosted by Federal agencies and Tribal organizations, and will seek Tribal representation in NRC meetings and advisory committees concerning NRC regulatory actions that have substantial direct effects on one or more Indian Tribes.

#### 4. The NRC Will Engage in Timely Consultation.

The NRC will provide timely notice to, and consult with, Tribal governments on NRC's regulatory actions that have substantial direct effects on one or more Indian Tribes. Tribal officials may request that the NRC engage in government-to-government consultation with them on matters that have not been identified by the NRC to have substantial direct effects on one or more Indian Tribes. The NRC will make efforts to honor such requests, taking into consideration the nature of the activity at issue, past consultation efforts, available resources, timing issues, and other relevant factors.

The NRC will establish early communications and begin consultation at the earliest permissible stage, as appropriate. The NRC will consult in good faith throughout the agency decision-making process and develop and maintain effective communication, coordination, and cooperation with Indian Tribes. The NRC representative for consultations with Tribal officials or representatives will be of an appropriate rank of NRC representatives and level of interaction commensurate with the circumstances. The appropriate level of interaction will be determined by past and current practices, continuing dialogue between NRC and Tribal governments, and program office consultation procedures.

#### 5. The NRC Will Coordinate with Other Federal Agencies.

When the Commission's action involves other Federal agencies, the NRC will perform its Tribal consultation jointly with other Federal agencies, as appropriate.

#### 6. The NRC Will Encourage Participation by State-recognized Tribes.

The NRC recognizes the distinction between Indian Tribes who are Federally recognized and those who are not. The NRC will outreach to States to identify the appropriate State-recognized Tribes to invite to participate in its regulatory process, including opportunities related to rulemaking, hearings, licensing, decommissioning, and enforcement.

#### Designated Official and Tribal Liaisons

The Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs serves as the NRC's designated official for Tribal consultations.<sup>3</sup> The designated official shall ensure that agency program personnel have considered the Tribal implications related to their responsibilities within the NRC's scope of jurisdiction and shall facilitate meaningful and timely consultation and coordination concerning the development, administration, and enforcement of NRC's regulatory actions that have substantial direct effects on one or more Indian Tribes.

The designated official shall be supported by staff who have functional responsibility to serve as intergovernmental liaisons to Indian Tribes, under NRC Management Directive 5.1. These NRC Tribal liaisons will facilitate government-to-government consultation by serving as the agency's primary points of contact for Indian Tribes, coordinating with the appropriate office or personnel regarding programmatic inquiries, and facilitating the appropriate level of communication and exchange of information between Tribal officials and NRC staff. The Tribal

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<sup>3</sup> In 2006, the Commission created the position of Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs (SECY-06-0125, "Proposed Reorganization of the Offices of Nuclear Material Safety and Safeguards and State and Tribal Programs" (ADAMS Accession No. ML061950452)). The position includes different responsibilities, including that of the Commission's designated official for Tribal consultations.

liaisons shall also educate NRC staff about Tribal issues including cultural sensitivity and the Federal Trust Relationship. The designated official shall have the authority to delegate tasks to NRC Tribal liaisons as he/she deems fit.

## **VI. Procedural Requirements**

### **Paperwork Reduction Act Statement.**

This Policy Statement does not contain new or amended information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

### **Public Protection Notification.**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request protocol for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Dated at Rockville, Maryland, this 10<sup>th</sup> day of November, 2014.

For the Nuclear Regulatory Commission.

Rochelle C. Bavor, Acting,  
Secretary of the Commission.

**[7590-01-P]**

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